IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO,

WESTERN DIVISION

Tronsen	3:08 CV 148
v. *Toledo-Lucas County* Public Library	Judge Carr
(herein after also as 'TLCPL')	Memorandum Supporting and
	Plaintiff's MOTION FOR SUMMARY JUDGMENT

Plaintiff moves for summary judgment.

SUPPORTING MEMORANDUM:

Plaintiff says that speech-expression by default is 'protected' with regard to individual rights & protections afforded by the First Amendment. Plaintiff says all protected speech or expressions of thoughts, ideas, or expressions uttered or offered in public places is due First Amendment protection(s).

Defendant has filed a defense based on an alleged violation of the library Code of Conduct, BUT: even a quick reading of the library Code reveals that the conduct defendant relies on & defends with (the allegation that Plaintiff wrote & delivered an unwanted note for another library patron) IS NOT MENTIONED in the library Code.

Plaintiff says that content-based restrictions on protected speech are Extremely Suspect, and limited mostly to incidents where there is Serious, threatening, or inciting to violence (coupled with capacity-capability to deliver) message. Since defendant has not alleged such a message, his defense FAILS.

Although this is a matter in controversy, any reading of the library Code in effect at the time & date of the alleged infraction reveals that the conduct alleged is not mentioned.

Attempting to enforce a violation or infraction NOT MENTIONED in the Code would not be constitutional for a few reasons:

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a) This application is - would be over-broad over-reaching, according to previously set standards[1] (footnote from Hill v. Colorado, 530 U.S. 703 (CO, 2000); *Chicago* v. *Morales,* 527 U.S. 41, 56—57(1991); Cohen v. California, 403 U.S. 13 (1971).
b) It is neither reasonable nor definite as set in Nemotko v. Maryland reported at 340 U.S. 268 (MD, 1951).
c) Enforcement of an unwritten rule, especially where other rules are written, invites arbitrary & selective discretionary enforcement decisions that cannot be afforded to officials; Forsyth County Georgia v. Nationalist Movement, 505 U.S. 123 (GA, 1992); Chicago v. Morales 527 U.S. 41 (1991).
d) A six-month banishment is a dis-proportionately heavy-burdensome consequence compared to the damage done/nature of the infraction, as per the logic-rationale set in Whitney v. California, 274 U.S. 357 (CA, 1927)[2], 'even IF the Plaintiff violated the library Code'.
e) Plaintiff says that for the library to follow-up, to enforce a complaint from a library visitor-patron of this alleged (but in reality, Non-Violation) violation-complaint, amounts to a Heckler's Veto, of which the First Amendment knows none[3].

[1] First, if it fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits.

Second, if it authorizes or even encourages arbitrary and discriminatory enforcement. *Chicago* v. *Morales,* 527 U.S. 41, 56—57 (1999).

[2] Although the outcome of Whitney has been vacated, Plaintiff says this logic – reasoning survives.
[3] Robb v. Hungerbeeler, 370 F. 3d 735 (MO, 2003); Reno v. ACLU, 521 U.S.844 (KY, 1997).

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